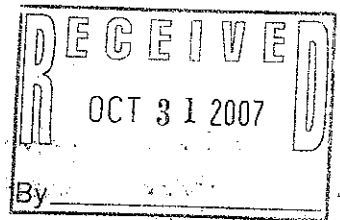


STATE OF ARIZONA  
OFFICE OF ADMINISTRATIVE HEARINGS



1  
2  
3 [REDACTED], a Student, by and through  
4 Parents [REDACTED] and [REDACTED],

No. 07C-DP-07057-ADE

5 Petitioners,

6 -v-

7 Gilbert Unified School District No. 41,

8 Respondent.

**ADMINISTRATIVE**  
**LAW JUDGE**  
**DECISION**

9  
10  
11 **HEARING:** September 6-7, 2007

12 **APPEARANCES:** Petitioners, Parents [REDACTED] and [REDACTED], appeared on behalf of  
13 themselves and Student [REDACTED], and were represented by attorney Lori Kirsch-Goodwin,  
14 KIRSCH-GOODWIN & KIRSCH, PLLC; attorney Denise Lowell-Britt, UDALL,  
15 SHUMWAY & LYONS, P.L.C., appeared on behalf of the Gilbert Unified School District  
16 (GUSD), accompanied by Julene Robbins, Ph.D., Lead Psychologist, GUSD. Court  
Reporter Colette E. Ross of Arizona Reporting Service, Inc. recorded the proceedings.<sup>1</sup>

17 **WITNESSES:**<sup>2</sup> For Petitioners: [REDACTED], Mother; **Christopher**  
18 **Nicholls, Ph.D.**, Independent Evaluator; **Kim Yamamoto**, Friend of Parents and  
19 Special Needs Advocate ("Friend"); **Janet Chao, Ed.D.**, Independent Evaluator.

20 For Respondent School District: **Julene Robbins, Ph.D.**,  
21 Lead Psychologist, GUSD ("Lead Psychologist"); **Nicki Serio**, School Psychologist and  
22 Evaluator, GUSD ("School Psychologist"); **Kristen Acton**, Fifth Grade Regular  
23 Education Teacher, GUSD ("Fifth Grade Teacher"); **Yuval Larsen**, Sixth Grade Regular  
24 Education Teacher, GUSD ("Sixth Grade Teacher"); **Rachel Strong**, School Social  
25 Worker, GUSD ("School Social Worker"); **Dana Simpson**, Occupational Therapist,  
26 GUSD ("Occupational Therapist"); **Amy Benton**, Speech Language Pathologist, GUSD  
27 ("Speech Language Pathologist"); and **Jennifer Fay**, Speech Language Pathologist  
28 and GUSD Autism Consultant ("Autism Consultant").

29 **ADMINISTRATIVE LAW JUDGE:** Eric A. Bryant

30 <sup>1</sup> The parties agreed during the pre-hearing conference that the court reporter's record would be the official record of the hearing, even though this tribunal has also made a digital recording of the proceedings for purposes of reviewing testimony.

<sup>2</sup> To avoid the use of proper names, in order to protect confidentiality, each witness, with the exception of independent evaluators Drs. Nicholls and Chao, is designated a generally descriptive title to be used in the body of the Decision. The proper names are grouped here for ease of redaction.

1 Parents bring this due process action, on behalf of Student, to challenge the  
2 determination made by Respondent Gilbert Unified School District that found Student  
3 not eligible for special education services under the disability category of autism. The  
4 law governing these proceedings is the Individuals with Disabilities Education Act  
5 ("IDEA"), 20 United States Code (U.S.C.) §§ 1400-1482 (as re-authorized and amended  
6 in 2004),<sup>3</sup> and its implementing regulations, 34 Code of Federal Regulations (C.F.R.)  
7 Part 300,<sup>4</sup> as well as the Arizona Special Education statutes, Arizona Revised Statutes  
8 (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative  
9 Code (A.A.C.) R7-2-401 through R7-2-406.<sup>5</sup>

10 Petitioners filed their due process complaint on June 5, 2007. A pre-hearing  
11 conference was held on July 16, 2007, and the parties discussed the issues presented  
12 in the complaint. By the time of the hearing in September, only one issue remained:

13 Whether Student is eligible for special education under the  
14 IDEA and Arizona law as a child with autism?

15 Petitioners agreed at the start of the hearing that this was the only issue to be  
16 addressed.<sup>6</sup> Petitioners also understood and agreed that only eligibility would be  
17 addressed in this Decision, not what services, if any, should be provided if Student is  
18 found to meet eligibility under the autism category.

21 <sup>3</sup> By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004,"  
22 IDEA 2004 became effective on July 1, 2005.

23 <sup>4</sup> The current federal regulations became effective October 13, 2006, just *after* Respondent School  
24 District's decision to deny eligibility. This means that the pre-October 2006 regulations are the applicable  
25 regulations and would usually be applied and cited to herein. However, a comparison of the former and  
26 current regulations that apply to the issue in this case shows that they are substantially the same, the  
27 differences being only re-numbering and minor grammatical changes. Therefore, because there is no  
28 material difference, this Decision will apply and cite the current regulations.

29 Additionally, the promulgation of new regulations effective October 2006 also raised the interesting  
30 possibility that Student would be ineligible under the old regulations but eligible under the new regulations,  
or vice versa. But, as already mentioned, the applicable regulations are substantially the same and so  
that possibility is removed because eligibility criteria in the category of autism did not change with the new  
regulations.

<sup>5</sup> It is noted that these rules are being revised to comport with the 2005 changes in federal and Arizona  
special education law, but have not yet been published by the Arizona Secretary of State.

<sup>6</sup> An issue regarding reimbursement for testing and evaluations was settled and withdrawn the day before  
the hearing started. (See Petitioners' NOTICE OF WITHDRAWAL OF EXHIBITS, filed September 5, 2007, and  
Respondent School District's NOTICE OF WITHDRAWAL OF SPECIFIED EXHIBITS, filed September 5, 2007.)

1 The parties presented testimony and Exhibits at the hearing on September 6 and  
2 7, 2007. Petitioners presented testimony from the witnesses noted above and Exhibits  
3 numbered 1 through 41, which were admitted into the record.<sup>7</sup> Respondent School  
4 District presented testimony from the witnesses noted above and Exhibits numbered R1  
5 through R35.<sup>8</sup> The Administrative Law Judge has considered the entire record,  
6 including the testimony and exhibits,<sup>9</sup> and now makes the following Findings of Fact,  
7 Decision, and Order finding that Student is not eligible for special education services as  
8 a child with autism as defined by the IDEA and Arizona law.

### 9 **FINDINGS OF FACT**

10 1. Student is currently a [REDACTED] grader attending school in Respondent School  
11 District. He has been attending school within Respondent School District since pre-  
12 school and has been identified as a child with disabilities the entire time. During his  
13 elementary school years, he was identified as eligible for special education under two  
14 categories: (1) specific learning disabilities (SLD) in oral and written expression, basic  
15 reading skills, listening comprehension, reading comprehension, reading fluency, and  
16 math calculation; and (2) speech language impairment.<sup>10</sup> He has received special  
17 education and services addressing these disabilities, administered as pull-out and  
18 resource room additions to his regular education classroom setting. He has made  
19 some progress, but still lags behind in his areas of disabilities.

### 20 **Suspicion of Autism—Dr. Nicholls' Evaluation**

21 2. Over these years, Parents developed the growing sense that something more  
22 was causing Student's problems at school. In early 2006, they began to inquire about  
23 Respondent School District's programs and services for autistic children.

24 <sup>7</sup> These Exhibits are listed and briefly described in PETITIONERS' LIST OF WITNESSES AND EXHIBITS filed  
25 August 28, 2007. Exhibits 5, 6, 8, 14, 15, 16, 20, 27, 34, 35, 37, 40, and 41 were not admitted for various  
26 reasons noted on the record. Exhibits 42 through 55 were withdrawn before the hearing started.

27 <sup>8</sup> RESPONDENT'S LIST OF WITNESSES AND EXHIBITS was filed August 28, 2007. Exhibits R1, R29, and the  
28 last four pages of Exhibit R34 were not admitted for various reasons noted on the record. Regarding R29,  
29 Petitioners indicated toward the end of the second hearing day that they were going to object to the exhibit  
30 when it was offered. Respondent School District intended to offer R29 (this is evident from the record on  
the second day of hearing at about the six hour mark), but neglected to do so. It is therefore treated as  
not admitted. Exhibits R36 through R40 were withdrawn before the hearing started.

<sup>9</sup> The Administrative Law Judge has read each admitted Exhibit, even if not mentioned in this Decision.  
The Administrative Law Judge has also considered the testimony of every witness, even if not mentioned  
in this Decision.

<sup>10</sup> See Exhibit R14.

1        3. In April 2006, Respondent School District's Autism Consultant observed  
2 Student during part of his school day.<sup>11</sup> The Autism Consultant reported that Student  
3 played with other children at recess, behaved appropriately and as instructed in class,  
4 made eye contact with other children and his teacher when conversing, and did not  
5 show signs of any unusual behaviors. In May 2006, Respondent School District's  
6 School Psychologist observed Student as he watched a movie in class and reported no  
7 unusual behaviors.<sup>12</sup> From these observations Respondent School District reported  
8 that there were no indications of typically autistic behaviors.

9        4. Parents requested an Independent Educational Evaluation (IEE) to explore  
10 Student's condition further. An evaluation was performed in April 2006 by Christopher  
11 J. Nicholls, Ph.D. Dr. Nicholls is a clinical psychologist, licensed in Arizona and Ohio,  
12 and Board-certified in Pediatric Neuropsychology. He has been in private practice  
13 since 1987.<sup>13</sup> He is well-qualified to evaluate children regarding psychological  
14 concerns. This tribunal also finds that Dr. Nicholls has expertise concerning autism and  
15 autism spectrum disorders.

16        5. As part of his evaluation, Dr. Nicholls performed an extremely thorough  
17 review of Student's prior evaluation records. In his "Psychological Evaluation" report,  
18 Dr. Nicholls' notes the results of assessments and testing of Student beginning with  
19 pre-school, which show delays in reading and language.<sup>14</sup> Many records from  
20 evaluations in the 2005-2006 school year were reviewed. Dr. Nicholls noted  
21 documentation of significant delays in receptive and expressive language skills, and  
22 articulation. He noted severe impairment in phonological processing. Reading skills  
23 were also a noted problem. Dr. Nicholls reported that Student had been found eligible  
24 for special education in the categories of Specific Learning Disability and  
25 Speech/Language Impairment. He also reported that Student had been found eligible  
26 for Extended School Year (ESY) services in April 2006 in the area of reading. Finally,  
27 he noted the results of neuropsychological testing that showed many areas of "intact  
28

29 <sup>11</sup> Exhibit R4.

30 <sup>12</sup> *Id.*

<sup>13</sup> Exhibit 2.

<sup>14</sup> Exhibit 3.

1 neuropsychological functioning" but other areas of impairment related to reading and  
2 memory.<sup>15</sup>

3 6. Based on this data, Dr. Nicholls decided to investigate Student's presentation  
4 in relation to "the Autism spectrum of disorders."<sup>16</sup> Therefore, he administered the  
5 Autism Diagnostic Inventory – Revised (ADI-R), a structured interview with Student's  
6 Parents. Dr. Nicholls used this instrument because it is a highly reliable resource for  
7 diagnosing autism, as he noted:

8 This instrument is considered the "gold standard" in the diagnosis of  
9 autism, which relies primarily on descriptions of an individual during the  
10 early years, and particularly between the ages of four and five years of  
11 age. The strengths of this approach lie in its objectification of symptoms  
12 that are unique to diagnosis of autism, and the developmental course an  
13 individual shows during the early years. The limitations of this approach  
14 are that it is primarily interview based, and relies upon parental report.  
15 The ADI-R is structured so as to assess the presence or absence of the  
16 American Psychiatric Association's Diagnostic and Statistical Manual's,  
17 and World Health Organization's diagnostic criteria for Autism.<sup>17</sup>

18 The questions are focused on three areas of development: Language and  
19 Communication Functions, Social Development and Play, and Interests and Behaviors.  
20 These areas are coded and scored, and there are "cut-offs" for the presence of autism.

21 7. The results for Student were that his scores were at or slightly above the cut-  
22 offs in each category.<sup>18</sup> Some of these scores were no surprise, as Student clearly has  
23 problems with language and communication.<sup>19</sup> In the area of social interaction, results  
24 showed that Student has had longstanding difficulties with making eye contact and  
25 focusing attention on a person while that person is speaking. He "shows some  
26

27 <sup>15</sup> *Id.* at 3. It should be noted that the neuropsychological testing was performed by Dr. Michael S. Lavoie,  
28 a neuropsychologist who worked in conjunction with Dr. Nicholls and had a limited role in the evaluation.  
29 Dr. Lavoie did not render a diagnosis. (See Exhibits R31 and R32.)

30 <sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 6.

<sup>19</sup> Because the parties agree that Student has significant language and communication deficits (see Exhibit R10), these Findings of Fact focus on the areas of social interaction and behaviors. It is settled that verbal and non-verbal communication problems are present in Student and that these can be caused by autism, which has been diagnosed in Student by medical professionals. The issue to reach in this Decision, as noted below, is whether there is autism that not only significantly affects verbal and non-verbal communication, but also significantly affects social interaction and adversely affects educational performance. See Conclusions of Law 4.

1 evidence of reciprocal social smiling but not in a regular or predictable manner."<sup>20</sup> He  
2 wants to have friends, but has a hard time fitting in with groups. He shows empathy for  
3 others and love for his parents, but despite this "[Student] often does not seem to  
4 understand what is going on in his environment."<sup>21</sup> He does not know how to relate to  
5 others. Dr. Nicholls noted that Student had much improved in these areas since his  
6 younger childhood.

7 8. Information brought forth in the ADI-R showed that Student has had some  
8 odd behaviors.<sup>22</sup> It was reported that Student does not like to touch paper, and that this  
9 interferes with reading. He also is reported to have overly sensitive reactions to loud  
10 noises and the smell of magic markers. He is said to "walk on his toes" as a habit.<sup>23</sup>

11 9. After describing the information gleaned from the questions to Parents in the  
12 areas of communication, social interaction, and behavior, Dr. Nicholls' report lists the  
13 results from his administration of the ADI-R. Student was at or slightly above the cut-off  
14 scores for autism in each of the areas. Dr. Nicholls noted that "[i]t is likely that  
15 [Student's] challenges in these areas have been a causative factor in his difficulties in  
16 progressing in school, and his lack of response to certain previous interventions."<sup>24</sup> He  
17 noted that Student has "made substantial progress in several areas over the years" and  
18 credited the hard work of Student, parents, and teachers for development of coping  
19 skills that enable Student to function fairly well.<sup>25</sup> He also noted that Student has an  
20 average to low average intellectual level that helps him function well, in comparison to  
21 the more common occurrence of a pairing of autism and mental retardation. He  
22 concluded that Student may be described as having "High Functioning Autism" and  
23 noted: "As such, he does not show many of the behaviors commonly thought to be  
24 necessary for this diagnosis, in that many of the symptoms considered by the lay public  
25 to represent autism are actually a reflection of the mental retardation that often  
26 accompanies this diagnosis."<sup>26</sup>

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27 <sup>20</sup> *Id.* at 5.

28 <sup>21</sup> *Id.*

29 <sup>22</sup> *Id.* at 5-6.

30 <sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* Note the use of the word "likely," leaving a note of uncertainty.

<sup>25</sup> *Id.*; see also Exhibit 4.

<sup>26</sup> *Id.*

10. Thus, the ADI-R, the primary diagnostic instrument that Dr. Nicholls used to evaluate Student, indicated that Student is autistic, as that term is defined by the DSM-IV,<sup>27</sup> but high functioning.

11. Dr. Nicholls also received some information from several of Student's teachers through the Behavior Assessment System for Children, Teacher Rating Scale—Adolescent,<sup>28</sup> a questionnaire completed and returned by the responder, not a structured interview like the ADI-R. The information gleaned from the questionnaire showed elevated scores on the Anxiety scale and trouble with organization and executive functioning.<sup>29</sup> The teachers' responses did not show as many symptoms within "the Autism spectrum" as the parents have reported, but Dr. Nicholls accounted for this by noting that Student is high-functioning and does not have many of the typical symptoms of autism.<sup>30</sup>

12. The report's "Conclusions and recommendations" acknowledges the speech/language challenges that Student faces, but adds that "[Student]'s learning challenges are felt to be additionally associated with the disruption in neuropsychological processes that constitute the clinical features of Autism" and that Student's special education categorization for speech/language impairment and learning disability "does not fully capture his needs."<sup>31</sup>

#### Re-Evaluation by Respondent School District

13. Based on Dr. Nicholls' report of his evaluation of Student, Respondent School District decided to further evaluate Student, focusing on the suspected disability of autism.<sup>32</sup> The observations described in Finding of Fact 3 were performed, along with further occupational therapy evaluation, and autism rating scales and other checklists completed by Student's special education teacher and Fifth Grade Teacher.<sup>33</sup> Also, Respondent School District reviewed recent evaluations of Student in auditory

<sup>27</sup> *Id.*, "DSM-IV" stands for DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION.

<sup>28</sup> Although Lead Psychologist testified that Dr. Nicholls used an outdated version of the BASC, this claim was not established through adequate foundation.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 6-7.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> Student's most recent evaluation had occurred in August 2004. See Exhibit R8 at 1.

<sup>33</sup> Exhibit R8 at 5-6, 8-13.

1 processing, speech and language, and occupational therapy.<sup>34</sup> More importantly,  
2 Respondent School District's School Psychologist administered the Autism Diagnostic  
3 Observation Schedule (ADOS), which is "a semi-structured, standardized assessment  
4 of communication, social interaction, and play for individuals referred for evaluation  
5 because of possible autism spectrum disorders."<sup>35</sup>

6 14. School Psychologist, who administered the assessment and testified at the  
7 hearing, is a Masters-level school psychologist who is certified as such both nationally  
8 and by the State of Arizona.<sup>36</sup> She has been trained to administer the ADOS.<sup>37</sup> This  
9 tribunal finds that she is a competent and qualified examiner for the ADOS.

10 15. The ADOS lasts for generally about an hour and consists of various  
11 activities (puzzle, telling a story, picture description, etc.), which the child performs while  
12 interacting with the person administering the test. The examiner observes the child in  
13 many areas (speech abnormalities, echolalia, conversation, eye contact, facial  
14 expressions, empathy, insight, compulsions, etc.) and scores them according to  
15 specified coding scales.<sup>38</sup> The raw scores are plugged into an algorithm to determine  
16 scores in several domains (communication, social interaction, and a combined score for  
17 both), and then to compare them to cut-off scores in order to obtain a classification of  
18 autism or a classification of autism spectrum disorder or neither. The ADOS is not  
19 designed to render a diagnosis, but can be used as part of an evaluation to determine a  
20 diagnosis.<sup>39</sup> The authors of the ADOS are quite clear that cut-off scores must be  
21 exceeded in all three domains (communication, social interaction, combined) for a  
22 classification to be given.<sup>40</sup> This means that the cut-off scores for autism must be  
23 exceeded in all three areas for a child to receive the classification of autism.

24 16. The ADOS given to Student by School Psychologist resulted in scores not  
25 even close to the cut-off for autism, and less distant (but still distant) from the cut-off  
26

27 <sup>34</sup> *Id.* at 5-6.

28 <sup>35</sup> *Id.* at 6. Module 3, which is the appropriate module for Student, was administered.

29 <sup>36</sup> Exhibit R3a.

30 <sup>37</sup> *Id.*, Certificate of Completion.

<sup>38</sup> Exhibit R7.

<sup>39</sup> Exhibit R34.

<sup>40</sup> *Id.*



1 scores for autism spectrum disorder.<sup>41</sup> In sum, School Psychologist simply did not  
2 observe in Student many of the characteristics associated with autism.

3 17. Based on all of the information gathered (prior evaluations, recent  
4 evaluations including Dr. Nicholls' report, the results of the ADOS and other  
5 assessments) a multidisciplinary evaluation team that included Parents met on two  
6 dates in September 2006 to discuss and determine whether Student qualified for  
7 special education as a child with autism. Although the team did not reach unanimous  
8 agreement (Parents dissented), the majority of the team concluded that Student did not  
9 meet autism criteria for special education.<sup>42</sup> The team was unanimous, however, in  
10 finding that Student exhibited "[i]rregularities or impairments in verbal and non-verbal  
11 communication."<sup>43</sup>

12 18. Based on the records included with the autism eligibility determination  
13 form,<sup>44</sup> which include notes from the meetings in September, and based on the  
14 testimony of some of the members of the majority on the multidisciplinary evaluation  
15 team,<sup>45</sup> the team considered all the information gathered, including Dr. Nicholls' report.  
16 Dr. Nicholls' report did not persuade the majority of the team because those members  
17 did not think that Dr. Nicholls obtained much information about Student in the school  
18 setting. The information he gathered was almost entirely from Parents and seemed  
19 focused on early childhood development and behaviors at home that school personnel  
20 were not seeing in the school setting. In addition, Dr. Nicholls seemed focused on a  
21 clinical diagnosis rather than an educational diagnosis, and the team needed to  
22 determine an educational diagnosis to fulfill its legal obligations. Thus, for the majority  
23 of the team members, the absence of significant autistic-like behaviors observed at  
24 school meant that Student did not qualify for special education as a child with autism.<sup>46</sup>

25  
26 <sup>41</sup> Exhibit R7.

27 <sup>42</sup> Exhibit R10.

28 <sup>43</sup> *Id.*

29 <sup>44</sup> Exhibits 13, R8, R9, and R10.

30 <sup>45</sup> Testimony was received from the following team members: School Psychologist, Sixth Grade Teacher, Occupational Therapist, and Autism Consultant.

<sup>46</sup> For example, in addition to the observations noted in Finding of Fact 3 above, the occupational therapy assessment performed by Occupational Therapist in August 2006 did not find any concerns with adequate eye contact or sensory regulation. Exhibit R26.

Continued Disagreement and Discussion

19. Parents continued to express disagreement with the denial that Student met the criteria for the autism category. Early in 2007, Lead Psychologist contacted Dr. Nicholls seeking clarification about his April 2006 evaluation. Dr. Nicholls sent a letter to Lead Psychologist in January 2007 discussing the basis for his diagnosis of Autism. This letter, admitted as Exhibit 4 and Exhibit R33, is an important piece of evidence to consider.

20. Based on Dr. Nicholls' response in the letter, he was apparently told that the results of Respondent School District's ADOS did not show autism. He acknowledges that "educational diagnoses are different from clinical diagnoses" and that Respondent School District must follow the standards imposed by law.<sup>47</sup> He then explains why Student might not exhibit typical symptoms of autism:

[I]t is my belief that [Student] indeed does fit the diagnosis of autism, but that as a result of his relatively high functioning levels of cognitive abilities and the dedicated efforts of his parents and former providers, he likely does not demonstrate the overt symptoms of this condition that are consistent with what many individuals understand autism to represent. It is also the case that [Student]'s symptoms may not meet the level of severity or pervasiveness that would trigger criteria on the ADOS, however this does not invalidate the diagnosis, in my opinion.<sup>48</sup>

Dr. Nicholls then quotes one of the authors of the ADOS, Dr. Catherine Lord, to note that the ADOS can be under-inclusive "with very mild, verbal adolescents and adults with autism spectrum disorders."<sup>49</sup> Dr. Nicholls then notes that Student is in a subtype of the autism spectrum because of his high functioning and opines that Student's intelligence and development of sufficient coping skills may have allowed him to "pass" the ADOS. Nevertheless, Dr. Nicholls continues to find that an autism diagnosis is supported by the information he gathered and reviewed and he continues to believe that it is a necessary component to fully describe Student's challenges.

21. It appears that Dr. Nicholls was also told that Student was functioning relatively well in the educational setting, because he acknowledges that observation

<sup>47</sup> Exhibits 4, R33.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* (footnote omitted; emphasis added).

1 and concedes that Student "may not require a higher levels [sic] of environmental  
2 restriction implicated by a self-contained classroom for autistic children."<sup>50</sup> He points  
3 out that Student did show signs of emotional distress and difficulties with executive  
4 functions. He then declares that "[Student]'s difficulties therefore pose some degree of  
5 adverse educational impact. . . ."<sup>51</sup>

6 22. Finally, Dr. Nicholls concludes his letter by deferring to Lead Psychologist  
7 (and by association to Respondent School District): "I do not presume to have your  
8 expertise in school psychology and defer to your judgment regarding the most  
9 appropriate educational program for [Student]."<sup>52</sup>

10 23. In June 2007, Petitioners filed their due process hearing complaint.

11 In Preparation for Hearing

12 24. In August 2007, Petitioners obtained another psychological evaluation, this  
13 time from Janet Chao, Ph.D. Dr. Chao is an Arizona-licensed psychologist and a  
14 certified school psychologist. She has been in private practice at the Melmed Center in  
15 Phoenix for over ten years, specializing in assessment and treatment of children and  
16 adolescents with attention, behavioral, learning and/or developmental challenges. She  
17 is trained and qualified to administer the ADOS, and has been doing so for more than  
18 five years.<sup>53</sup>

19 25. Dr. Chao reviewed available records concerning Student, given to her by  
20 Parents, most notably Dr. Nicholls' report. She was also given much of the  
21 documentation from the September 2006 eligibility determination, but it did not have a  
22 cover letter or title page that identified it as such, so it was difficult for Dr. Chao to  
23 determine its context. Dr. Chao's primary testing of Student was to administer the  
24 ADOS. Her goal, as stated in her "Psychological Evaluation," was "to provide  
25 diagnostic clarity and further information about the presence and severity of symptoms  
26 related to the diagnosis of autism."<sup>54</sup>

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28 <sup>50</sup> *Id.*

29 <sup>51</sup> *Id.*

30 <sup>52</sup> *Id.*

<sup>53</sup> Exhibit 11.

<sup>54</sup> Exhibit 12. Dr. Chao, like School Psychologist, administered Module 3 of the ADOS.

1 26. Dr. Chao reports observations made both before and during the  
2 administration of the ADOS. She notes that Student did not have trouble separating  
3 from Parents for the testing. During the testing, his head was down with eyes averted  
4 and low affect observed. Dr. Chao reports that the quality of rapport was "awkward."<sup>55</sup>  
5 She states that Student "seemed lethargic and put his hand to his head frequently."<sup>56</sup>  
6 Asked if he had a headache, he responded that he did. Dr. Chao notes that Student's  
7 eye contact was poorly modulated and that conversational comments from the  
8 examiner were repeatedly dropped without verbal or non-verbal response. Although Dr.  
9 Chao notes that "Test results are considered to be representative of [Student]'s current  
10 functioning,"<sup>57</sup> based on the whole of the evidence submitted at hearing, it is evident  
11 that Student was having a "bad day" on this date. While this does not invalidate the  
12 results of the test,<sup>58</sup> it does provide a more narrow context for the results than perhaps  
13 Dr. Chao was aware. Combined with the results from the Respondent School District's  
14 ADOS, it gives information about how Student presents on both "good days" and "bad  
15 days."

16 27. While Dr. Chao did observe behaviors that are consistent with autism, such  
17 as those noted above, she also notes the absence of others. She did not observe any  
18 sensory issues or idiosyncratic use of words or phrases. No echolalia was observed.  
19 Neither did Student exhibit "finger mannerisms, self-injurious behaviors, compulsions,  
20 or excessive reference to a topic."<sup>59</sup>

21 28. The results from Dr. Chao's ADOS testing were that he did not meet the cut-  
22 off score for autism in the Communication domain, but was just at the cut-off in that  
23 domain for autism spectrum. Because of this, according to the authors of the test,<sup>60</sup>  
24 Student could not be classified as autistic under the ADOS, even though he did exceed  
25 the cut-off scores for the Social Interaction domain and the Combined score.  
26  
27

28 <sup>55</sup> *Id.* at 2.

29 <sup>56</sup> *Id.*

30 <sup>57</sup> *Id.*

<sup>58</sup> As far as this tribunal can determine.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> See Finding of Fact 15 above; Exhibit R34.

1 Nevertheless, Dr. Chao concluded that "[Student]'s behavior presentation is consistent  
2 with an ADOS diagnosis of Autistic Disorder."<sup>61</sup>

3 29. Dr. Chao then took the information that she had gathered, primarily from her  
4 observations during the ADOS, and, like Dr. Nicholls, compared it to the DSM-IV  
5 diagnostic criteria for Autistic Disorder. She found that Student met those criteria and  
6 diagnosed him with autism.<sup>62</sup> This is clearly a clinical, not educational, diagnosis.

7 30. Also in August 2007, about two weeks before the hearing, Lead Psychologist  
8 observed Student at school, and School Psychologist observed Student, for the second  
9 time, at school. Lead Psychologist observed Student during a math class in a regular  
10 education setting.<sup>63</sup> She found that he interacted with the teacher appropriately,  
11 followed directions without prompting, and wrote on paper in his notebook with no  
12 apparent problem touching the paper. She found that in between class he initiated  
13 conversation with other students, and the math teacher reported that when students  
14 must get partners for an activity, Student will initiate partnership with other students.

15 31. School Psychologist observed Student during Physical Education (PE)  
16 class.<sup>64</sup> During this class the students were working out with weights and weight  
17 machines. This involved many students in one room and turn-taking, which Student  
18 had no problems with. Also, the location was noisy, but Student showed no apparent  
19 signs of trouble with the noise. Once again, observations of Student in the school  
20 setting showed no behaviors commonly associated with autism or that interfered with  
21 his ability to participate in his education.

22 At Hearing

23 32. At hearing, Respondent School District called as witnesses Lead  
24 Psychologist, School Psychologist, Fifth Grade Teacher, Sixth Grade Teacher, School  
25 Social Worker, Occupational Therapist, Speech Language Pathologist, and Autism  
26 Consultant. Many of these witnesses have spent large amounts of time with Student at  
27 school. They generally confirmed what the multidisciplinary evaluation team had  
28 concluded in September 2006: that Student has a few mild behaviors that are

29 <sup>61</sup> Exhibit 12 at 3.

30 <sup>62</sup> *Id.* at 4.

<sup>63</sup> Exhibit R28.

commonly associated with autism (inconsistent eye contact, occasional toe-walking, repetitive face touching) but that do not interfere with his education.

33. Petitioners called two witnesses other than the expert evaluators Drs. Nicholls and Chao. Student's Mother testified about Student's background and history as well as his behavior at home. As evident from the ADI-R results, Student's behavior at home seems to be quite different than what is observed at school.<sup>65</sup>

34. Petitioners also called Friend, who is acquainted with Student outside of school, has an autistic son, and does work for a non-profit organization that helps disabled children. She observed Student at school and noted several repetitive behaviors. The behaviors did not seem to interfere with his education, however.

35. Most importantly, the parties called their expert witnesses to the stand. Dr. Nicholls supported and defended his report. He confirmed his diagnosis of autism and explained his use of the ADI-R rather than the ADOS. He decided that the ADI-R would be a better instrument for Student because he is older (not a child) and higher functioning, as it is his opinion that the ADOS is better suited for younger and low-functioning children and can sometimes "miss" higher-functioning autism. He acknowledged that his report is limited by the fact that he did not see Student personally. He characterized his evaluation as a "forensic" evaluation. He emphasized that Student was experiencing high levels of anxiety and problems with organization and management that might lead to behavioral problems if not addressed. He also acknowledged that Student has shown progress over time.

36. When Dr. Nicholls was asked how the anxiety that he was seeing reported by Student's teachers fit with autism, Dr. Nicholls answered by describing how disabilities in general cause anxiety in performance of daily activities and especially for Student at school. He did not, however, differentiate, between the anxiety that Student may be experiencing from his specific learning and speech language disabilities and any autism that may be present. Perhaps this is not possible, but in any event it was

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<sup>64</sup> *Id.*

<sup>65</sup> During Mother's testimony, Petitioners admitted Exhibit 10, a very brief letter from a Speech Pathology Assistant about observations of Student. This Exhibit has been given no weight. It is extremely brief and provides little to no foundation for its statements. In addition, it is inconsistent with Exhibit R35, an

1 not done. So, the anxiety that Dr. Nicholls emphasized cannot be said to be a  
2 indication of autism, since it may just as likely be stemming from Student's other  
3 disabilities.

4 37. Dr. Nicholls emphasized that he understood Student to have problems  
5 maintaining eye contact. He agreed with Parents' concerns that this might interfere with  
6 Student's ability to be successful in his reading program because the program relies on  
7 participants observing lip movements of the teacher. However, apparently  
8 unbeknownst to Dr. Nicholls, there is evidence that Student has made good progress in  
9 his reading program.<sup>66</sup> So, these concerns are not borne out by other evidence of  
10 which Dr. Nicholls was not aware.

11 38. Dr. Nicholls candidly admitted that his evaluation was limited. He noted that  
12 he normally does three times the amount of work, but was limited in this instance by  
13 financial considerations. It appears that Dr. Nicholls' report is best viewed as a forensic  
14 psychological evaluation focused on the clinical diagnosis of autism, rather than a  
15 psycho-educational evaluation exploring an educational diagnosis of autism.

16 39. In sum, while Dr. Nicholls confirmed his clinical diagnosis of autism, he was  
17 not asked and so did not state whether Student had an educational diagnosis of  
18 autism.<sup>67</sup>

19 40. Dr. Chao also testified; she too explained and defended her report. She  
20 explained that because Dr. Nicholls had administered the ADI-R, she decided to  
21 perform the ADOS. She described the ADOS and commented about how the  
22 observations should be coded. She acknowledged that Student stated he had a

23 evaluation report from the supervisor of the author of Exhibit 10 who contradicts Exhibit 10 with regard to  
24 eye contact.

25 <sup>66</sup> Exhibit R9, Meeting Summary for September 26, 2006.

26 <sup>67</sup> During his testimony, Dr. Nicholls was asked if he agreed with a statement by the National Research  
27 Council's Committee on Educational Interventions for Children with Autism, of which Dr. Catherine Lord,  
28 an expert in the field of autism, is associated. The statement is that the Committee recommends that all  
29 children with autism, regardless of severity or level of functioning should be eligible for special education.  
30 (Exhibit 7.) This is not the current state of the law, and the recommendation appears to be from about  
2001. Dr. Nicholls expressed agreement with the recommendation. It is not clear, however, that this has  
any bearing on the credibility of his report or testimony, since he did not directly reach the issue of whether  
Student has an educational diagnosis of autism. It is also not clear why Petitioners referenced the  
recommendation. This tribunal does not take the statement to mean that all children with autism meet the  
IDEA criteria; rather, the statement recognizes that under the current state of the law some children with

1 headache and appeared to be tired during the test. She emphasized that Student did  
2 not have a four-part conversation with her during the test, although he had some verbal  
3 interactions with her.<sup>68</sup> At one point during cross-examination, she acknowledged that  
4 she did not have a great deal of information about Student in all settings, but was  
5 basing her conclusions on her testing, her observations, and the information that she  
6 was given.

7 41. There is no reason to doubt that Dr. Chao properly administered the ADOS  
8 and scored it according to her observations. She did not, however, as noted above,  
9 give an appropriate classification.<sup>69</sup> Given the scores, she should not have concluded a  
10 classification of autism. Also, it is clear that her evaluation was not a psycho-  
11 educational evaluation as contemplated by the IDEA. It is a limited piece of evidence in  
12 a larger group of evidence about Student. Her report concludes with a clinical  
13 diagnosis of autism, but not an educational diagnosis.

14 42. School Psychologist provided clear and reliable testimony about her  
15 administration of the ADOS to Student and about her observations of Student in the  
16 school setting. As the main compiler of the information for the multidisciplinary  
17 evaluation team, she also reviewed the information that team had in September 2006.  
18 Further, she described the thinking of the majority of the team regarding why they did  
19 not find Student to meet the criteria for autism. Since her testimony was focused on  
20 Student's functioning in the school setting and is supported by documentation, her  
21 testimony is given significant weight.

22 ...

23 ...

24  
25  
26  
27 autism WILL NOT meet the criteria. It is a recommendation to change that aspect of the law. As such, it  
28 has no value as an evidentiary matter.

29 <sup>68</sup> Based on her demeanor, it was clear to this tribunal that, although Dr. Chao had administered Student's  
30 ADOS a little over a month before the hearing, she was relying primarily on her notes of the interaction  
rather than an independent recollection. While this is not a major factor in this tribunal's analysis, it is  
noted.

<sup>69</sup> Finding of Fact 15.



## CONCLUSIONS OF LAW

This case raises issues concerning Student's eligibility and the evaluation process. The applicable law in these areas is as follows.

### APPLICABLE LAW

1. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a free appropriate public education that meets their individual needs.<sup>70</sup> These needs include academic, social, health, emotional, communicative, physical, and vocational needs.<sup>71</sup> To do this, school districts must identify and evaluate all children within their geographical boundaries who may be in need of special education and services. The IDEA sets forth requirements for the identification, assessment and placement of students who need special education, and seeks to ensure that they receive a free appropriate public education. A free appropriate public education (FAPE) consists of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."<sup>72</sup>

#### Eligibility and Evaluation

2. To provide the instruction and services required by the law, school districts must inform themselves about a student's disability and needs. This is accomplished by conducting "a full and individual initial evaluation" and subsequent re-evaluations to determine the child's eligibility and educational needs.<sup>73</sup> This consists of reviewing existing data and identifying any additional data that is needed.<sup>74</sup> When further assessment or testing is needed, the school district is responsible for procuring it.<sup>75</sup>

3. To be eligible for a free appropriate public education, a student must be a "child with a disability."<sup>76</sup> This means that the student has a disability falling within one of ten enumerated disability categories (or multiple disabilities), including mental retardation, hearing and visual impairments, serious emotional disturbance, autism, or

<sup>70</sup> 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

<sup>71</sup> *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9<sup>th</sup> Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

<sup>72</sup> *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

<sup>73</sup> 20 U.S.C. § 1414(a)(1) and (a)(2).

<sup>74</sup> 20 U.S.C. § 1414(c)(1).

<sup>75</sup> 20 U.S.C. § 1414(c)(2).

1 other health impairments, *and* because of the disability (or disabilities) needs special  
2 education and related services.<sup>77</sup> Specifically, an eligible student is "a child evaluated  
3 in accordance with [IDEA regulations] as having [an enumerated disability], and who, by  
4 reason thereof, needs special education and related services."<sup>78</sup>

5 4. Autism is one of the enumerated disabilities. It is defined as:

6 [A] developmental disability significantly affecting verbal and  
7 nonverbal communication and social interaction, generally  
8 evident before age three, *that adversely affects a child's*  
9 *educational performance*. Other characteristics often  
10 associated with autism are engagement in repetitive  
11 activities and stereotyped movements, resistance to  
12 environmental change or change in daily routines, and  
13 unusual responses to sensory experiences.<sup>79</sup>

14 This definition requires that the developmental disability significantly affect both  
15 communication and social interaction. It also requires that the disability adversely affect  
16 educational performance.<sup>80</sup> This echoes the second prong of the "child with a disability"  
17 definition, which also stipulates that the disability must affect a student's education.

18 5. Thus, eligibility for special education requires both an enumerated disability  
19 and the need for special education. "Special education" is "specially designed  
20 instruction . . . to meet the unique needs of a child with a disability. . . ."<sup>81</sup> "Specially  
21 designed instruction" is instruction that is adapted to meet the unique needs of the child  
22 by changing the content, methodology, or delivery of the instruction.<sup>82</sup> So, only children  
23 who have a disability in one of the enumerated categories *and*, because of the  
24 disability, require specially designed instruction are eligible for special education and  
25 services.

26 6. In order to determine whether a child has a categorical disability and the  
27 nature and extent of any special education he may need, an evaluation process is

28 <sup>76</sup> 20 U.S.C. § 1412(a)(1)(A).

29 <sup>77</sup> 20 U.S.C. § 1401(3).

30 <sup>78</sup> 34 C.F.R. § 300.8(a)(1); see A.R.S. § 15-761(2).

<sup>79</sup> 34 C.F.R. § 300.8(c)(1)(i)(emphasis added); see A.R.S. § 15-761(1) (substantially the same definition).

<sup>80</sup> This is the reason that several of the witnesses distinguished between a "medical" diagnosis of autism  
and an "educational" diagnosis of autism.

<sup>81</sup> 34 C.F.R. § 300.39(a); see A.R.S. § 15-761(31).

<sup>82</sup> 34 C.F.R. § 300.39(b)(3); see A.R.S. § 15-761(33).

1 mandated.<sup>83</sup> In conducting the evaluation, the school district must use a variety of  
2 means for gathering a variety of information about the student, including information  
3 from the parent.<sup>84</sup> The goal is to gather functional, developmental, and academic  
4 information about the child so that the evaluation is comprehensive as to the student's  
5 educational needs.<sup>85</sup> This information should come from teachers, parents, medical  
6 professionals, and other specialists who have assessed, evaluated, tested, and observed  
7 the student in a variety of settings but especially in the classroom.<sup>86</sup> Of primary  
8 importance are comprehensive educational evaluations performed by specialists  
9 (usually educational psychologists).<sup>87</sup>

10 7. The determination of whether a child is eligible and what his needs are is  
11 made by a multi-person team, which in Arizona is called the "multidisciplinary evaluation  
12 team" (MET).<sup>88</sup> As the name suggests, this team is made up of those with knowledge  
13 of the student and expertise in the various fields that are relevant to the student's  
14 disability and education. The MET includes the parents.<sup>89</sup> The MET gathers all the  
15 information described above and carefully considers it.<sup>90</sup> If it determines that the child  
16 is eligible, an IEP must be developed.<sup>91</sup> If not, the parents are officially notified in  
17 writing<sup>92</sup> and may request a due process hearing to challenge the team's conclusion.<sup>93</sup>

18 8. In a case where a student has multiple disabilities, it is important to identify  
19 each categorical disability so that an individualized educational program ("IEP") can be  
20 written addressing the student's educational needs that are a result of each disability.  
21 An IEP is not required to address educational needs that are not the result of a  
22 categorical disability.<sup>94</sup>

23  
24 <sup>83</sup> 20 U.S.C. § 1414(a)(1); 34 C.F.R. § 300.15; A.R.S. § 15-766.

25 <sup>84</sup> 34 C.F.R. § 300.304(b); 34 C.F.R. § 300.306(c).

26 <sup>85</sup> 34 C.F.R. § 300.304(c).

27 <sup>86</sup> 34 C.F.R. § 300.305(a); 34 C.F.R. § 300.306(c)(i).

28 <sup>87</sup> See 34 C.F.R. § 300.304(c). Note that educational evaluations are so important that the parent is given  
29 a right to an independent evaluation at no cost to parent. 34 C.F.R. § 300.502.

30 <sup>88</sup> A.R.S. § 15-761(15).

<sup>89</sup> *Id.*; 34 C.F.R. § 300.306(a)(1).

<sup>90</sup> 34 C.F.R. § 300.306(c).

<sup>91</sup> *Id.*

<sup>92</sup> 34 C.F.R. § 300.503(a).

<sup>93</sup> 34 C.F.R. § 300.507(a).

<sup>94</sup> 34 C.F.R. § 300.320(d).

## DECISION

9. A parent who files for a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.<sup>95</sup> The standard of proof is "preponderance of the evidence," meaning evidence showing that a particular fact is "more probable than not."<sup>96</sup> Therefore, Petitioners bear the burden of proving by a preponderance of evidence that Student is eligible for special education under the autism category. Petitioners have not met the burden with regard to autism because they have not shown that Student meets all criteria for the autism eligibility category.

10. The evidence of record supports some, but not all, of the elements of the definition of autism in the IDEA: "[A] developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, *that adversely affects a child's educational performance*."<sup>97</sup> Evidence shows that Student has the developmental disability of autism by virtue of the clinical diagnoses that have been rendered. Evidence also shows that the autism disability significantly affects Student's verbal and nonverbal communication.<sup>98</sup> Evidence does not show, however, the Student's social interaction is significantly affected at school. Thus, Student's clinical autism has not been shown to significantly affect communication *and* social interaction *and* adversely affect Student's educational performance. Student is, as described by Dr. Nicholls, "high functioning" on the autism spectrum. This must explain why his teachers and others who work with him and observe him at school are not observing any adverse affect in his social interactions at school.

<sup>95</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

<sup>96</sup> *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279 (1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

<sup>97</sup> 34 C.F.R. § 300.8(c)(1)(i)(emphasis added). The phrase "generally evident before age three" is not a mandatory element of the definition; 34 C.F.R. § 300.8(c)(1)(iii) makes it optional by declaring that a child who manifests characteristics of autism after age three could be eligible under the autism category if the other criteria in § 300.8(c)(1)(i) are found. This is yet another distinction between clinical autism and educational autism, as the DSM-IV criteria for autism requires the onset of certain characteristics before the age of three. Exhibit R2. Because the "generally evident before age three" phrase in the IDEA definition is not mandatory, it has not been addressed herein.

<sup>98</sup> Exhibit R10.

1 11. The evaluations performed by Drs. Nicholls and Chao are of limited use in  
2 this evidentiary record. Although they concluded with clinical diagnoses of autism,<sup>99</sup>  
3 they were not focused on Student's functioning in a school setting, which is the focus of  
4 the IDEA.<sup>100</sup> Nor did they render conclusions as to an educational diagnoses; they are  
5 silent in that regard.<sup>101</sup> Thus, their evaluations are not persuasive against the thorough  
6 and comprehensive psycho-educational evaluation<sup>102</sup> performed by Respondent School  
7 District and relied upon by the MET. In this regard, it is noted that the MET considered  
8 Dr. Nicholls' evaluation and Respondent School District articulated appropriate and  
9 substantiated reasons why it was not found to be persuasive as to an educational  
10 diagnosis.

11 12. In addition, when explaining and clarifying his conclusions in the January  
12 2007 letter to Lead Psychologist, Dr. Nicholls noted some "adverse educational impact"  
13 Student was experiencing.<sup>103</sup> However, it is not clear what he meant. After noting that  
14 Student was functioning "relatively well," but that he was experiencing anxiety and  
15 problems with executive functioning, he then states that Student's "difficulties therefore  
16 pose some degree of an adverse educational impact. . . ."<sup>104</sup> It is not clear as to what  
17 degree he thinks Student is affected; is "some degree" a small degree or a large  
18 degree? Under the IDEA, there must be a significant affect. Further, it appears that Dr.  
19 Nicholls is referring to the anxiety and executive function problems as the "difficulties,"  
20 and not directly to autism. It is not clear that these difficulties are a result of autism or  
21 the other disabilities that Student struggles with. Petitioners did not clarify this. As the  
22 party bearing the burden of persuasion, it was important that Petitioners show each  
23 element of the IDEA definition. Yet, they have failed to show how autism, clinically  
24 diagnosed in Student, is significantly affecting his social interaction at school in a way  
25 that adversely affects his education.

26 <sup>99</sup> This Decision does not address the validity of clinical diagnoses, even though some evidence was  
27 presented that casts doubt on it.

28 <sup>100</sup> For example, both evaluations are entitled "Psychological Evaluation" rather than identifying  
29 themselves as psycho-educational evaluations. The use of the DSM-IV, while appropriate in a clinical  
30 context, does not necessarily help determine IDEA eligibility, for the reasons already noted.

<sup>101</sup> Dr. Nicholls appears to have deferred to Respondent School District's judgment in this regard. See  
Finding of Fact 22.

<sup>102</sup> Including the Addendum, Exhibit R8.

<sup>103</sup> Finding of Fact 21.

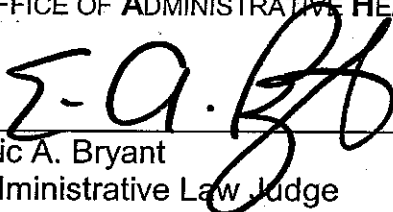
1 13. For these reasons, this tribunal does not find, on this record, that Student's  
2 clinical autism is causing him significant problems in the school setting. Therefore, it  
3 has not been shown that Student qualifies for special education and services under the  
4 category of autism.

5 **ORDER**

6 Based on the findings and conclusions above, IT IS HEREBY ORDERED that  
7 the relief requested in the due process complaint is **denied**. Student does not qualify  
8 as a student with autism for purposes of special education.

9 Done this 29<sup>th</sup> day of October 2007.

10 OFFICE OF ADMINISTRATIVE HEARINGS

11   
12  
13 Eric A. Bryant  
14 Administrative Law Judge

15 **RIGHT TO SEEK JUDICIAL REVIEW**

16 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(F)(3), this  
17 Decision and Order is the final decision at the administrative level.  
18 Furthermore, any party aggrieved by the findings and decisions made  
19 herein has the right to bring a civil action, with respect to the complaint  
20 presented, in any State court of competent jurisdiction or in a district court  
21 of the United States. Any action for judicial review must be filed within 90  
22 days of the date of the Decision or, if the State has an explicit time  
23 limitation for bringing this type of action, in such time as the State law  
24 allows.  
25  
26  
27 ...  
28 ...  
29  
30

1 Copy sent by fax and mailed by certified mail (No. 7001 0360 0002 8217 1556  
2 this 29 day of October 2007, to:

3 Lori Kirsch-Goodwin  
4 KIRSCH-GOODWIN & KIRSCH, PLLC  
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17 Copy mailed by interdepartmental mail  
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24 By Chris Finkel